

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HOWARD FRANKLIN §
v. § CIVIL ACTION NO. 6:10cv56
NATHANIEL QUARTERMAN §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Howard Franklin, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The sole named defendant in the lawsuit is Nathaniel Quarterman, the former Director of the Texas Department of Criminal Justice, Correctional Institutions Division.

Franklin complained about a slip and fall accident which he suffered while confined in TDCJ-CID. He asserted that the State of Texas employed the officer who was responsible for supervising the inmate who cleaned the floor, and that warning signs should have been placed to warn of the danger of the wet floor. In an amended complaint, Franklin says that he does not know the names of any other persons involved and that he had to be taken to a free-world hospital after the fall.

After review of the pleadings, the Magistrate Judge issued a Report on April 29, 2010, recommending that the lawsuit be dismissed. The Magistrate Judge observed that assertions of negligence do not amount to constitutional claims and that Franklin failed to show any involvement on the part of Quarterman, the sole named defendant. The Magistrate Judge thus recommended that

the lawsuit be dismissed with prejudice as to its refiling in federal court, but without prejudice as to any relief under state tort law which Franklin may seek in the courts of the State of Texas.

Franklin received a copy of this Report on May 12, 2010, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 12) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED as frivolous and for failure to state a claim upon which relief may be granted, with prejudice as to its refiling in federal court, but without prejudice as to any relief under state tort law which Franklin may seek in the courts of the State of Texas. It is further

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 21st day of June, 2010.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial "L".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**